

191—32.3(508) Requirements upon custodial account and custodial agreement. Custodied securities may be used to meet the legal reserve deposit requirements of Iowa Code section 511.8, subsection 16, provided such securities are held under written agreement with a custodian which provides:

32.3(1) That the custodial account is to be titled as follows: “_____ Insurance Company Account No. _____ in custody for and to vest in the Commissioner of Insurance of the State of Iowa in accordance with Iowa Code sections 507C.18 and 508.19”.

32.3(2) The commissioner shall notify the custodian, in writing, that a “Minimum Aggregate Value of Securities” must be held in the custodial account at all times. The commissioner’s notice remains in full force and effect until amended or revoked in writing by the commissioner. The company shall, on or before the fifteenth day of each month certify to the commissioner on a form provided by the commissioner that the aggregate value (determined as provided by Iowa Code section 511.8, subsection 17) of securities on deposit with the commissioner in the manner specified by Iowa Code section 511.8, subsection 16, and in the custodial account as of the last day of the preceding month was at least equal to the company’s legal reserve (as defined in Iowa Code section 511.8) as of the last day of the preceding year. In the event the company fails or refuses to make the certification provided in this subrule, or in the event the commissioner is authorized or directed by reason of any determination, appointment, or order pursuant to Iowa Code section 507C.18, 508.17, 508.18, or 508.22, the commissioner may acquire custody or otherwise assume control of the custodied securities, and may order reregistration, delivery, or other disposition which the commissioner deems appropriate under the circumstances. In addition, if the commissioner has reason to believe that a company may be insolvent, or that its condition is such as to render its further continuance in business hazardous to the public or holders of its policies, or that continued trading by the company in custodied securities may create a hazard to the public or policyholders, the commissioner may order the company to cease trading in custodied securities pending examination as provided in Iowa Code section 508.16. The company may from time to time deposit or withdraw securities from the custodial account, subject to the stated “Minimum Aggregate Value of Securities” on deposit.

32.3(3) That securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the federal reserve book entry system shall be separately identified on the custodian’s official records as being owned by the company. The custodian’s records shall identify which custodied securities are held by the custodian and which securities are in a clearing corporation or in the federal reserve book entry system. If the securities are in a clearing corporation, such records shall also identify the name of the clearing corporation, the location of the securities, and, if held through an agent, the name of the agent.

32.3(4) That all custodied securities that are registered must be registered in the name of the company, in the name of a nominee of a company, in the name of the custodian or its nominee, in the name of an agent of the custodian or its nominee, or, if held in a clearing corporation, in the name of the clearing corporation or its nominee.

32.3(5) That during the course of the custodian’s regular business hours, the commissioner or the commissioner’s representative and authorized employees and representatives of the company, shall be entitled to examine on the premises of the custodian the custodian’s records relating to custodied securities of the company.

32.3(6) That the custodian or its agents shall be required to submit to the commissioner, at least annually, or more often as the commissioner may from time to time request, the opinion(s) of an auditor who shall be satisfactory to the commissioner specifically addressing the respective systems of internal account control and record keeping of the custodian or its agents.

32.3(7) That the custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the company’s annual statement and supporting schedules as filed with various regulatory authorities and in connection with any audit of the financial statements of the company. Copies of these records shall be delivered to the commissioner upon written request to the custodian.

32.3(8) That the custodian is obligated to indemnify the company for any loss of securities while in its custody occasioned by negligence or dishonesty of the custodian's officers or employees, or burglary, robbery, holdup, theft, extortion, or mysterious disappearance, including loss by damage or destruction.

32.3(9) That, in the event there is a loss of the securities for which the custodian is obligated to indemnify the company, the custodian shall promptly replace the same, or the value thereof, and the value of any loss of rights or privileges resulting from said loss of securities and the custodian shall make available to the company for inspection any and all securities or value amounts so replaced.

32.3(10) That minimum levels of deposits of securities at face values totaling \$100,000 shall be maintained at all times.

32.3(11) The custodial agreement may contain additional specific operating instructions, controls and provisions concerning the operation of the custodial account provided such operating instructions, controls and provisions are not in conflict with these rules.

32.3(12) Custodial agreements shall be submitted by a company to the commissioner for the commissioner's review prior to execution to ensure compliance with these rules.

32.3(13) That the custodial agreement may be amended or terminated only with the prior approval of the commissioner.

This rule is intended to implement Iowa Code section 511.8(21).